

Chapter 2
MISHAP INVESTIGATION AND REPORTING

201. MISHAP INVESTIGATION. Comprehensive, accurate mishap investigation is essential to the success of the Navy mishap prevention program. The reports required by this instruction are separate and independent of any investigative report required by the Manual of the Judge Advocate General.

a. Types of Mishap Investigations and Reports. Several kinds of investigations and reports may be required for a given mishap. These include, but are not limited to, the following:

(1) Investigations and Reports Directed by This Instruction. Those are normally conducted by the commands involved.

(a) Limited Use Safety Mishap Investigation Reports

1 Definition. Reference (c) defines those reports as internal communication of the Department of Defense whose sole purpose is prevention of subsequent DOD mishaps. The Limited Use Safety Mishap Investigation Report is required for all flight mishaps and for those mishaps involving other complex weapon systems and associated equipment, such as ships and shipboard systems, where the determination of causal factors is vital to the national defense. Within the scope of this instruction, application of Limited Use Safety Mishap Investigation Reports includes only those mishaps which involve the operation or maintenance of ships and shipboard systems where determination of causal factors is required to assist in preventing occurrence of a similar mishap which would result in significant advantage to opposing forces in time of conflict. Excluded are those shipboard mishaps involving shipyard, repair facility, or private contractor operations which shall be General Use Safety Mishap Investigation Reports as discussed below.

2 Freedom of Information Act Access. An entire Limited Use Safety Mishap Investigation Report may be withheld from disclosure under exemption (b)(5) of the Freedom of Information Act 5USC552(1982 & Supp. IV 1986). However, a summary of purely factual information such as date, location, and mishap severity may be released as required by law, under court order, or upon specific authorization of Commander, Naval Safety Center.

3 Privacy Act. Limited Use Safety Mishap Investigation Reports or information extracted from those reports shall not be maintained in a Privacy Act system of records from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to an individual.

(b) General Use Safety Mishap Investigation Reports. Those reports are to be used for all mishaps not included in the Limited Use Category. Although the primary purpose of these reports is also mishap prevention, they may be released under the Occupational Safety and Health Program, Department of Labor regulations, or in response to Freedom of Information Act requests. In all cases, the provisions of paragraph 206 apply.

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(2) Naval Safety Center Investigations. Commander, Naval Safety Center, may participate in mishap investigations as requested. Independent Naval Safety Center mishap investigation may also be conducted under the authority of the Chief of Naval Operations. When an independent Naval Safety Center investigation is conducted, it will be in addition to any other investigations of the same event. Commands concerned will be advised before a Naval Safety Center investigation is conducted, and full cooperation of the Naval Safety Center's investigator with all other investigative bodies and vice versa is expected.

(3) JAG Manual Investigations, including claims investigation, shall be conducted as required by the JAG Manual. The safety investigator(s) and the JAG Manual investigator(s) shall not be the same person(s). Nothing in this instruction, however, prohibits JAG Manual investigator(s) from access to the same factual material or witnesses available to the safety investigator(s) or vice versa. The JAG Manual investigation shall be conducted independently and separately from either the type (1) or (2) investigation mentioned above. Reports of the type (1) and (2) investigations above shall not be made a part of JAG Manual investigations.

b. Investigation Procedures. While there are no procedures specifically prescribed for the conduct of mishap investigations, the guidelines set forth in the following paragraphs will assist the person conducting the investigation to prepare a complete and meaningful report. (Guidelines for forces afloat safety investigations are also provided in the Handbook for the Conduct of Forces Afloat Safety Investigations, NAVSAFECEN Pub 5102/29 (NOTAL)).

202. PRINCIPLES OF MISHAP INVESTIGATION. For every serious injury or mishap, it is estimated that there are approximately 10 minor injuries, 30 minor property damage events, and over 100 near mishaps. Those figures clearly illustrate the necessity to direct investigative efforts toward minor mishaps in addition to major mishaps. The analysis of frequency or potential of mishaps and identification of causes are essential to systematic control of mishap losses.

a. The purpose of conducting mishap investigations is to determine the basic causes and to formulate corrective action to prevent recurrence.

b. A mishap investigation report is basically the investigator's analysis and account of a mishap based on factual information gathered by a thorough and conscientious examination of all factors involved.

c. A mishap investigation is best conducted at the lowest level of supervision commensurate with the severity and circumstances of the mishap.

203. POSITIVE STEPS TO ENSURE REPORTING OF ALL MISHAPS. At all levels the immediate supervisor has the greatest influence on mishap reporting. There are two important things that must be done to ensure that all mishaps are reported:

a. Indoctrinate all subordinates, and especially new arrivals, to report all mishaps no matter how small, as well as the "near misses" where only chance prevented a mishap. Assure that personnel fully appreciate that hazardous conditions cannot be corrected unless they are reported conscientiously. For

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operational activities and forces afloat, internal reporting procedures are contained in OPNAVINST 3120.32B, Chapter 7.

b. Ensure that all mishaps are reported to the activity safety office(r) immediately so that the safety office(r) can initiate the appropriate action for the investigation.

204. CONDUCTING THE MISHAP INVESTIGATION. Some of the many factors involved in the investigation of mishaps are listed below. These are not all inclusive, but will serve as a basis from which to proceed.

a. Steps should be taken to preserve and/or photograph the material evidence.

b. Individuals providing information about themselves in connection with a mishap investigation shall be advised of the purpose and the routine use of such information. They will be provided the appropriate Privacy Act Statement as suggested in Figures 2-1 or 2-2 per the provisions of SECNAVINST 5211.5C.

c. INDIVIDUALS INTERVIEWED DURING INVESTIGATIONS CONDUCTED UNDER THIS INSTRUCTION SHALL NOT TESTIFY UNDER OATH AND SHALL BE ADVISED THAT THEIR STATEMENTS (ORAL OR WRITTEN) ARE FOR ONE PURPOSE ONLY - THE PREVENTION OF FURTHER MISHAPS. That assurance is necessary to obtain complete and candid information regarding the circumstances surrounding a mishap. Information obtained during any investigation conducted under this instruction shall not be the basis for any administrative, regulatory, disciplinary, or criminal proceeding within the Department of the Navy. This paragraph does not bar appropriate discipline when a management official, superior to the individual, obtains facts surrounding a mishap from a source different than an investigation conducted under this paragraph.

205. MISHAP INVESTIGATION REPORT REQUIREMENTS.

a. A safety investigation of every mishap, major or minor, must be conducted, the extent of the investigation being determined by its severity or significance. The activity shall establish guidelines to determine who, such as the safety office, the supervisor or the leading petty officer, etc. will conduct the investigation. In any command large enough to have a full-time safety officer, that person or qualified members of his/her staff shall be considered to do the investigation. While the supervisor or leading petty officer may assist or, in some cases conduct the investigation, the safety officer will have the major role in reviewing mishap reports for adequacy, thoroughness, and most critical of all, to see that corrective measures are identified and implemented. The situation may arise, particularly in the case of civilian employees, where the supervisor's participation in the safety investigation would inhibit appropriate disciplinary action being taken because of the privileged nature of mishap investigations. In these cases the activity safety office should be tasked to conduct the safety investigation. Regardless of whom actually performs the investigation, the supervisor/leading petty officer shall be informed of the findings. This information will be used only for future mishap prevention efforts. The investigator must complete a written report with firm, factual findings and recommendations for specific corrective action to be taken to prevent recurrence.

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b. All mishaps meeting the reportable criteria in Chapters 3 through 6 and 8 shall be reported directly to Commander, Naval Safety Center, using the appropriate message format. The notation, "LIMITED USE SAFETY MISHAP REPORT," or "GENERAL USE SAFETY MISHAP REPORT," will be placed at the beginning of the message.

206. RELEASE OF MISHAP INFORMATION

a. General. All mishap reports are FOR OFFICIAL USE ONLY. Mishap investigation reports or information contained therein will be used only for mishap prevention purposes. They will not be used in making any determination affecting the interest of an individual in a mishap. Specifically, they will not be used as evidence or to obtain evidence in determining misconduct or line of duty status, or in connection with any punitive or administrative action taken by the Department of the Navy. They shall not be released to any organization or person not requiring such information for official safety purposes except to the extent required by law or court order.

b. Release by an Individual Having Knowledge of Mishap Investigation Reports. Any individual having knowledge of the content of a Mishap Investigation Report is prohibited from release of that information, except per this instruction. Personnel who desire or are requested to release official mishap information in litigation must comply fully with DOD Directive 5405.2 of 23 July 1985, Release of Official Information in Litigation and Testimony of DOD Personnel as Witnesses, and SECNAVINST 5820.8.

c. Release to Other U. S. Military Services. Exchange of mishap information among the military services shall be limited to the respective safety centers, and shall be controlled to prevent compromise of privileged information.

d. Release to the News Media. Mishap information and photographs released to news media may be based on the factual information contained in Mishap Investigation Reports, but shall not include or show:

- (1) Mishap responsibility on the part of any person or command.
- (2) Failure of equipment or facilities.
- (3) Statements that tend to indicate liability of the Government or persons for the mishap.
- (4) Classified information.
- (5) Cause factors of mishaps.

This policy supplements Department of the Navy Public Affairs Regulations (SECNAVINST 5720.44A). In news releases in particular, it is essential to preserve the privileged status of limited use safety mishap investigation reports.

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e. Release Based on the Privacy Act of 1974. Limited Use Safety Mishap Investigation Reports or information extracted from these reports shall not be maintained in a Privacy Act system of records from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to an individual. Commands receiving requests for information which may be maintained in a system of records as defined by the Privacy Act in SECNAVINST 5211.5C shall promptly notify Commander, Naval Safety Center.

f. Release Based on Occupational Safety and Health Act (OSHA) or Department of Labor Regulations. Requests for information that indicate expressly or implicitly that they are being made in accordance with OSHA or Department of Labor regulations shall be forwarded to the Commander, Naval Safety Center.

g. Release Based on the Freedom of Information Act. Requests for information that indicate either expressly or by clear implication that they are being made under the Freedom of Information Act shall be forwarded to the Commander, Naval Safety Center.

h. Release to the Congress. Requests for information from the Congress, its committees, or members shall be forwarded to the Office of Legislative Affairs per SECNAVINST 5730.5G.

i. Release to Relatives of Persons Involved in Mishaps. Notification to relatives of persons involved in mishaps will be done as prescribed by the Naval Military Personnel Manual (MILPERSMAN) or the Marine Corps Casualty Procedures Manual. The information released shall make no reference to any cause factors of a mishap, and classified information will not be provided. Mishap Investigation Reports will not be shown or given to next of kin or representatives of the next of kin.

j. Subpoenas for Mishap Information. Subpoenas for mishap information for use in civil or military criminal proceedings, anticipated litigation, or in administrative claims against the Government shall be referred to the Judge Advocate General, Department of the Navy, per SECNAVINST 5820.8.

k. Release to Technical Representatives and Contractors. Requests for mishap information from technical representatives, manufacturers, and contractors or their agents shall be forwarded to the Commander, Naval Safety Center. Endorsements shall certify whether or not the requested information is legitimately required for safety purposes regarding product design or improvement. Information shall be furnished with the complete understanding that it will be used ONLY for safety, and shall not be further released by the requester.

l. Release of Navy, Marine Corps, and Other Department of the Navy Activities. Requests for mishap information from Navy, Marine Corps, and other Department of the Navy activities shall be forwarded to the Commander, Naval Safety Center.

m. Release to Foreign Nations. Requests for information from foreign nations shall be forwarded to the Chief of Naval Operations (OP-622).

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n. Unspecified Cases. In cases of requests for information not specified above, the requests shall be forwarded to the Commander, Naval Safety Center.

207. MISHAP INVESTIGATION REPORT REVIEW

a. The Naval Safety Center will provide a repository for all mishap investigation reports and conduct a review of all mishap reports to:

(1) Ensure adequacy of information to provide a reasonable picture of the mishap.

(2) Ensure that any local corrective action indicated is both appropriate and adequate to the incident.

(3) Consider the applicability of the included hazards to other commands for possible dissemination.

(4) Select those mishaps that should be identified for management review based on the severity of the mishap.

b. Management Review. The Naval Safety Center will provide for the review of mishap reports by appropriate levels of management where the severity of significance of the mishap warrants. Available information concerning the mishap and associated information from all sources will be provided to the appropriate manager for consideration and recommendation. Recommended actions will be provided when appropriate.

c. Corrective Action Management. The Naval Safety Center will maintain current status information on significant recommendations for corrective action in safety and mishap prevention matters, and initiate recommendations for corrective actions to competent authority.

208. FLOW CHART. The "Mishap Report Pathfinder" (Appendix H) may be consulted to determine reporting/recording requirements.

PRIVACY ACT STATEMENT FOR
LIMITED USE SAFETY MISHAP INVESTIGATION REPORT

1. Authority: 10 U.S.C. 5031
2. Principal Purpose: To improve equipment design, safety and warning devices, operating and maintenance procedures and training, administrative and engineering controls, and personnel protective devices to prevent or reduce to a minimum the accidental loss of Navy personnel and material.
3. Routine Use(s): The information being requested will be used by officials and employees of the Naval Safety Center and those officials of the DOD to prevent mishaps and to promote and monitor safety/safety programs. Collective or individual mishap reports form the basis for safety advisories to the fleet, media material for safety publications, and for specific recommendations in the areas of human factors and equipment design to higher authority to prevent mishaps.
4. Mandatory or Voluntary Disclosure: The information being requested is voluntary, however, failure to provide the requested information will diminish the overall understanding of the causes of the mishap.

ADVICE TO WITNESS

I understand that:

- a. I have been requested to voluntarily provide information to a board conducting an investigation of a naval mishap.
- b. I am not being requested to provide a statement under oath or affirmation.
- c. All information provided by me will be used ONLY for safety purposes.
- d. The information provided by me shall NOT be used.
 - (1) In any determination affecting my interests.
 - (2) As evidence or to obtain evidence in determining misconduct or line of duty status of killed or injured personnel.
 - (3) As evidence to determine the responsibility of myself or other personnel from the standpoint of discipline.
 - (4) As evidence to assert affirmative claims on behalf of the government.
 - (5) As evidence to determine the liability of the government for property damage caused by a mishap.
 - (6) As evidence before administrative boards or bodies.

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- (7) In any punitive or administrative action taken by the Department of the Navy.
- (8) In any other investigation or report of the mishap about which I have been asked to provide information.
- e. We will attempt to maintain the confidentiality of your statement.

PRIVACY ACT STATEMENT FOR
GENERAL USE SAFETY MISHAP INVESTIGATION REPORT

1. Authority: 10 U.S.C. 5031
2. Principal Purpose: To improve equipment design, safety and warning devices, operating and maintenance procedures and training, administrative and engineering controls, and personnel protective devices to prevent or reduce to a minimum the accidental loss of Navy personnel and material.
3. Routine Use(s): The information being requested will be used by officials and employees of the Naval Safety Center and those officials of the DOD to prevent mishaps and to promote and monitor safety/safety programs. Collective or individual mishap reports form the basis for safety advisories to the fleet, media material for safety publications, and for specific recommendations in the areas of human factors and equipment design to higher authority to prevent mishaps.
4. Mandatory or Voluntary Disclosure: The information being requested is voluntary, however, failure to provide the requested information will diminish the overall understanding of the causes of the mishap.

ADVICE TO WITNESS

I understand that:

- a. I have been requested to voluntarily provide information to a board conducting an investigation of a naval mishap.
- b. I am not being requested to provide a statement under oath or affirmation.
- c. Within DOD all information provided by me will be used only for safety purposes. It is further understood, however, that the information contained in this report may be released in response to a Freedom of Information Act request or under the Occupational Safety and Health Program or Department of Labor regulations.
- d. The information provided by me shall NOT be used:
 - (1) As evidence or to obtain evidence in determining misconduct or line of duty status of killed or injured personnel.
 - (2) As evidence to determine the responsibility of myself or other personnel from the standpoint of discipline.
 - (3) As evidence to assert affirmative claims on behalf of the government.
 - (4) As evidence before administrative boards of bodies.

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- (5) In any punitive or administrative action taken by the Department of the Navy.
 - (6) As evidence to determine the liability of the Government for property damages caused by a mishap.
- e. We will attempt to maintain the confidentiality of your statement.